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# Critical Analysis of Article 356 of the Indian Constitution: A Provision of Emergency or Tyranny?

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AYUSHI MALIK<sup>1</sup> AND AAYUSHI BHARGAVA<sup>2</sup>

## ABSTRACT

*The idea of the proclamation of a state of emergency owing to a breakdown in constitutional machinery refers to a situation in which the state's established constitutional procedures stop working according to the Constitution's stipulations. This serious collapse frequently results in a breakdown of law and order, which prevents the state government from carrying out its obligations under the constitution. About India, Article 356 of the Constitution allows the imposition of a President's Rule in a state going through such a breakdown. Although this clause was originally intended to provide the federal government more authority to protect the welfare of the public, it has been used as a tool to unseat state governments. Unfortunately, this interpretation erodes the fundamental federalist and democratic values established in the Constitution. The article aims to examine the legal foundation for declaring an emergency due to the malfunction of constitutional machinery. It highlights the inherent flaws in this clause, particularly its propensity to defeat its stated goal. The clause occasionally gets used to undermine the country's federal system and democratic foundation rather than protecting the integrity of the constitution. The article explores the flaws in this emergency service through a critical examination and offers potential solutions. By doing so, it hopes to add to the conversation on the need for a more sensible and balanced application of Article 356 that is in line with the original intent of safeguarding democratic ideals and maintaining the federal character of the country.*

**Keywords:** *Federalism, Constitution, Article 356, President's Rule, Emergency, State Machinery, Misuse.*

## I. INTRODUCTION

The Indian Constitution's Article 356<sup>3</sup> gives rise to the phenomenon known as "President's rule," sometimes known as "central rule." If a state's constitutional machinery fails, this constitutional provision gives the President of India the authority to take over control of the government.

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<sup>1</sup> Author is a student at Institute of Law, Nirma University, India.

<sup>2</sup> Author is a student at Institute of Law, Nirma University, India.

<sup>3</sup> INDIA CONST. art. 356

When a state faces rising political unrest, violent incidents, or a breakdown in law and order, this intervention typically takes place. When the President's rule is used, the state legislature is dissolved or suspended, allowing the President to take control of the state through the use of a selected Governor. Although designed to address the needs of a failing state administration, this constitutional tool has not escaped scrutiny. Due to its vulnerability to abuse by the federal government, it has drawn criticism. Such concerns are supported by the provision's inherent ability to affect the country's federal structure. Our goal is to demonstrate how historically significant instances of the imposition of presidential authority have been affected by political factors. In this setting, strong requests for the recalibrating of this provision have gained traction, supported by the desire to prevent its exploitation. The theory that lies at the core of our case is that the integrity of India's federal structure is unquestionably threatened by the declaration of the President's rule. This claim is supported by its propensity to violate national sovereignty, to disrespect the will of the people as a whole, to be used for partisan political benefit, and to cause unjustified delays in the restoration of democratic governance. Our investigation has scrutinized the legal framework's cracks and gaps, as shown via the lens of pertinent jurisprudential precedents, to provide an effective solution to this perplexing conundrum.

## **II. HISTORICAL RELEVANCE OF ARTICLE 356 OF THE CONSTITUTION**

Article 356's origins in the Indian Constitution can be traced to the Constituent Assembly's discussions during the crucial process of constitution drafting. This clause was given its proper place in the constitution with the explicit goal of resolving concerns about the country's cohesion, integrity, and stability in times of emergency or turmoil. Notably, a precedent that had been dormant in the annals of legislative history—specifically Section 93, Government of India Act 1935<sup>4</sup>—proposed an illuminating pattern for the contours of these emerging Constitutional provisions but, tragically, never came into being. Although Article 356 primarily gets its conceptual basis from Articles 93 and 45<sup>5</sup> of the Government of India Act 1935, it is important to recognize that its functional story differs and is distinguished by separate intent. A small group of the Constitution's drafters had serious misgivings about this particular item during the writing process because they feared it would unintentionally revive an imperial past. This mistrust was offset by the intention, which was unwavering: to give the Union a legal mechanism, a juridical recourse, through which it could successfully navigate through situations of political upheaval while assuming the role of a mentor or benefactor. However, the inclusion

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<sup>4</sup> Government of India Act, 1935 § 93

<sup>5</sup> Government of India Act, 1935 § 45

of Article 356 under the heading of emergency provisions is still shrouded in doubt. Despite careful constitutional artistry, its contours appear to exist in an ambiguous space. Article 356 remains a witness to the nuanced distinctions and the ongoing dialectic between meaning and interpretation in India's constitutional law, notwithstanding its genesis and conceptual goal.

### **III. CRITICAL EVALUATION OF ARTICLE 356**

#### **(A) Analysis of article 356**

India accepted the 'federalism' paradigm, but some members of the constituent assembly thought the country had adopted a malleable framework, giving it the ability to operate as a federal system while simultaneously effortlessly shifting into a unitary system when circumstances required. While the country and its people may be divided into several states for administrative convenience, the nation and its people remain an indivisible whole, with its people forming a cohesive whole living under a single dominion deriving from a common source<sup>6</sup>. The federal government cannot unilaterally assume exclusive responsibility for quelling an internal uprising within a state, pre-empting the jurisdiction of the state authorities tasked with maintaining public order, unless a state of National Emergency is officially declared by the provisions outlined in Article 352<sup>7</sup> of the constitution, or the authority of a state government is suspended by the requirements of Article 356<sup>8</sup>.

Internal unrest within a State goes beyond simple violations of law and order or disturbances of the peace; it can undermine the State's basic security. It is difficult to compile an exhaustive list of such instances because the erosion of constitutional machinery can take place in a variety of ways. However, the following categories can be used to conduct a discriminating analysis of situations falling within or outside the scope of constitutional collapse under this Article:

- (a) Political Crisis
- (b) Internal Subversion
- (c) Physical break-down
- (d) Non-compliance with constitutional directions of the Union Executive

Given that many scenarios of constitutional collapse may contain elements from several types, these categories act as classification compartments. This classification helps in deciding

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<sup>6</sup> National Commission to Review the Working of Constitution, Report I, 8.1.2 (2002).

<sup>7</sup> INDIA CONST. art. 352

<sup>8</sup> Ministry of Home Affairs (G.O.I.), Inter-State Council Secretariat, "Report of the Sarkaria Commission" (January 1988), Chapter VI – Emergency Provisions, Para 6.3.10 < <http://interstatecouncil.nic.in/report-of-the-sarkaria-commission/> > accessed on 8<sup>th</sup> May 2020.

whether or not to use the ultimate authority granted by Article 356 in a particular situation, despite the complexity and variety of situations of this kind<sup>9</sup>.

### **(B) Excessive invocation of article 356**

The Article 356 clause has been used more than a hundred times by the Union government since India gained its independence. This constitutional provision was commonly used in states led by rival political parties to suspend both the legislative and executive departments. Such interventions were justified because the majority in power had suffered significant electoral reverses, reducing their mandate to the point where it was improbable that they would be able to establish a workable government following new elections.

The case of the illustrious former prime minister, Indira Gandhi, who invoked Article 356 a total of 27 times, frequently on grounds that were viewed as being insignificant, stands out as one of the most prominent examples. The Janata Party's use of Article 356 in the 1970s to overthrow the Congress Party's rule in nine states is evidence that this clause quickly evolved into an instrument of partisan retaliation. Following this, the Congress Party used the same provision to overthrow nine state governments led by the Janata Dal when it regained power in the 1980s. The Sarkaria Commission was founded in 1983 as a result of this unsettling series of incidents. The commission was tasked with considering issues relating to the Union's and the states' interactions during that time, to address the complexities and nuanced considerations that had emerged.

### **(C) Vagueness of the words used in article 356**

The language used in Article 356<sup>10</sup> appears to be open to both unclear and imprecise demarcation, making it liable to misunderstanding and even abuse. The term "by the provisions of the Constitution" <sup>11</sup>is surrounded by a grey area of law that is open to numerous interpretations that lead to ambiguity and lack of clarity. When an incident occurred in Kerala in 1959, the ambiguity of this feature became glaringly apparent, illuminating the complex issues raised by the provision.

The President retains the power to impose the President's rule within a state should a circumstance arise where the regular operation of the state's governance is regarded to be inconsistent with the guidelines set forth by the Constitution. Surprisingly, the item fails to

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<sup>9</sup> Ministry of Home Affairs (G.O.I.), Inter-State Council Secretariat, "Report of the Sarkaria Commission" (January 1988), Chapter VI – Emergency Provisions, Para 6.4.01 < <http://interstatecouncil.nic.in/report-of-the-sarkaria-commission/> > accessed on 10<sup>th</sup> May 2020.

<sup>10</sup> INDIA CONST. art. 356

<sup>11</sup> INDIA CONST. art. 356

provide a clear explanation of what situations would constitute a situation in which the state's governance could not be carried out by constitutional standards. Additionally, neither a means for the President to determine the appearance of such a scenario nor a list of important considerations is provided in this clause. This omission essentially creates a space for subjective interpretation, giving the President some leeway to enact laws based on personal preference.

The section is noticeably quiet regarding the duration of the President's authority and the requirements for its eventual termination, which adds to this feature of ambiguity. Due to these ambiguities, the state administration as well as the general public are trapped in a maze of doubt and are without clear expectations or a plan for taking appropriate action. Overall, Article 356's vague language allows for a great deal of authority abuse and undercuts the values upheld by the Indian Constitution.

#### **IV. ASSESSMENT OF LEGISLATIVE, EXECUTIVE AND JUDICIAL RESPONSE**

According to Article 356, the President has the authority to proclaim to further his or her declaration that it is impractical to carry out the state's government by the principles of the Constitution. According to this Proclamation, Parliament shall be given the authority and be responsible for carrying out the state legislature's duties. After receiving this authority, Parliament can create laws covering any or all of the items listed in the State List. Depending on the situation, either Parliament during the Proclamation era or the State Legislature after the Proclamation loses its influence, these legislative enactments remain in effect until they are either altered or revoked. Due to this dynamic, the Union Executive appears to be attempting to usurp the authority of state legislatures.

##### **1. Rajasthan v. Union of India<sup>12</sup>**

The letter cannot be used as an erroneous or irrelevant justification for the exercise of authority under Article 356 in this case, the court rules. It was found that even if the legislature has not approved it, Article 356 may be used with the President's consent. The proclamation is only effective in this situation for two months, though. However, if the cited justifications or grounds are completely fictitious or malicious, it may be permissible to question the president's proclamation. The court therefore thinks that judicial review of the proclamation made by Article 356 is feasible, but the circumstance must be extraordinary.

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<sup>12</sup> State of Rajasthan v Union of India AIR 1977 SC 1361

## **2. SR Bommai v. Union of India<sup>13</sup>**

Since the landmark decision in *S.R. Bommai v. Union of India*, the incidence of misapplication of this rule has been significantly reduced. At the time, the Janata Dal government in Karnataka was led by Chief Minister S.R. Bommai. His administration was overthrown by Article 356 of the Constitution, and President's Rule took control of the state. The argument that the Bommai-led administration had lost its majority status as a result of planned defections started by numerous party leaders at that time served as the basis for its dismissal. Interestingly, Bommai was prevented from putting his Assembly majority to the test by the then-Governor, P. Venkatasubbaiah. In this situation, the Supreme Court handed down a significant decision that established a set of rules for the sensible implementation of Article 356:

1. The Council of Ministers' majority will be put to the test on the House floor.
2. The Centre should issue a warning to the state and give it one week to respond.
3. The court cannot question the COMs' advice to the President, but it can question the material underlying the President's satisfaction. As a result, Judicial Review will only involve three questions:
  - a) Is there any material supporting the proclamation?
  - b) Is the material pertinent?
  - c) Was there any abuse of authority?
4. If Article 356 is used improperly, the court will provide a remedy.
5. It is the President's power that is limited under Article 356(3). As a result, until the proclamation is approved by Parliament, the president may not take any irreversible action, such as dissolving the assembly.
6. Article 356 is justified only when constitutional machinery fails, not administrative machinery.

## **3. Sarkaria Commission<sup>14</sup>**

After weighing the pros and cons, the commission identified four distinct scenarios in which Article 356 could be used to overthrow the state administration.

- If a certain political party or coalition of parties is unable to secure a sufficient majority to rule the state.

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<sup>13</sup> *S.R. Bommai v Union Of India* (1994) 3 SCC 1

<sup>14</sup> Sarkaria Commission Report 1987, Ch VI

- Internal unrest led to the State government's functioning, which could encourage subversion and threaten accountable government.
- Failing to react to internal unrest or a natural disaster.

The state government refuses to follow orders from the Union in circumstances like maintaining the nation's infrastructure or carrying out military orders. The Commission disregarded the justifications offered by succeeding Union administrations to explain the disproportionate application of this provision beyond the allotted time limit by defining these four broad criteria for the activation of this provision. Additionally, the Commission put up an important order designed to support the relevance of the malafide grounds during later judicial evaluations. This required the recommendation of a suitable revision, including the explicit inclusion of the relevant facts and justifications constituting the foundation for invoking Article 356(1) in the proclamation itself.

## **V. SHORTCOMINGS AND CRITICISM**

The profound words of Bhimrao Ambedkar ring true, indicating that Article 356 was one of those measures that was codified as a safety net, designed for sparing use during rare instances of crisis, essentially leaving it a "dead letter of the law." Article 356 has power that is both unusual and arbitrary, but it also mimics the eerie tendency of great power to sow the seeds of corruption inside its user. The core issue is that rather than arising from any genuine disregard for constitutional safeguards, this clause has a persistent tendency to be used for political purposes. This reality is demonstrated in incidents like the use of Article 356<sup>15</sup> by former prime minister Indira Gandhi to overthrow nine majority opposition governments.

There are numerous instances where Article 356<sup>16</sup> has received harsh criticism, mostly because it infringes on the Indian Constitution's federal structure. The autonomy of individual states is reduced as a result of this provision's excessive delegation of power to the federal government, which also interferes with the complex power dynamics established by the constitutional structure. This article's problematic nature is further highlighted by the frequent use of it by numerous administrations for political purposes rather than based on fundamental constitutional principles.

Adding to these worries, Article 356 undermines the crucial system of checks and balances because decisions made in reliance on this article are not subject to judicial review, which gives the impression that the central government is acting arbitrarily. The installation of the

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<sup>15</sup> INDIA CONST. art. 356

<sup>16</sup> INDIA CONST. art. 356



President's rule creates a vacuum of authority within the state, which is perhaps its most significant effect. This instability could eventually go beyond the state's population and affect the equilibrium and economic stability of the entire country.

## **VI. RECOMMENDATIONS**

The following recommendations are suggested that can provide a way forward where it imposes a constitutional restraint on the blatant misuse of this provision which has been used mostly as an instrument of tyranny and not an emergency:

- The recommendations given by the Sarkaria Commission and the Punchhi Commission should be implemented in their entirety.
- Judicial activism may be beneficial only in rare cases, but an activist judiciary is neither good for the country nor for the judiciary itself.
- There is a need for a constitutional amendment as the ambiguity of Article 356<sup>17</sup> allows political parties at the Centre to use this extraordinary power to further their interests.
- The facts and grounds for Presidential satisfaction should be made an essential part of the proclamation which would strengthen the principle of judicial review.
- To avoid any wrong and unintended consequences, the proclamation should be approved by Parliament before the assembly's dissolution.
- The guidelines that were set in the S.R. Bommai case should be followed strictly.

## **VII. CONCLUSION**

A careful analysis of the situations in which emergency measures have been used reveals a troubling trend: instances of presidential control have happened even when strong arguments were glaringly absent. This unsettling trend has cast a shadow over Indian politics, and it is a worrying aspect that directly undercuts the principles of federalism. Unfortunately, this phenomenon appears to be the shadowy side of the country's political system. The situation surrounding this topic is complex since it is impossible to repeal this legal system as it is because it is crucial to address certain needs that, if ignored, would jeopardize democracy as a whole. serious constitutional changes and steadfast political resolve to stop the repeated abuse of Article 356<sup>18</sup> are required to bring about serious change in this area. This provision's transformation into a conduit of recurrent misuse, often inactive in its actual execution, is

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<sup>17</sup> INDIA CONST. art. 356

<sup>18</sup> INDIA CONST. art. 356

illustrative of a situation that is currently casting a shadow over democratic values. The current situation requires us to actively reverse the tendency of misusing and misrepresenting Article 356—a development that flagrantly contradicts the fundamental principles of federalism. The main objective is to prevent this emergency provision from becoming a tool of dictatorship. To succeed, we must all work together to protect the federal system's integrity and the democratic values that underpin the country.

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